S.B. Civil Writ Petition No.5762/2007
Ashok Babel
vs
Addl. District Judge (F.T.) No.2, Udaipur & Anr.

Date of order : 10.12.2007.

HON'BLE MR. PRAKASH TATIA, J.

Mr. JP Joshi, for the petitioner.
Mr.Rajesh Joshi,for the respondent.

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Heard learned counsel for the parties.

In other writ petition,the objection of the petitioner about the incorporating the tape recorded conversation in the affidavit of the witness of the plaintiff is based on the ground that this evidence cannot be admitted in evidence. That objection was rejected by the trail court, but this Court is of the view that at this stage, the decision should have been deferred and the matter should have been decided by the trail court at the time of final decision by following the spirit of proviso of sub-rule (4) of Rule 4 of Order 18 CPC which provides that any objection raised during the recording of evidence before the Commissioner shall be recorded by him and decided by the Court at the stage of arguments. This same principle can be applied when even evidence is recorded before the court itself and that depends upon facts of each case and in this case, this Court is of the view that the Court may consider objection

of he petitioner at the time of hearing of the case.

In view of the above, the writ petition of the petitioner is disposed of.

(PRAKASH TATIA), J.

c.p.goyal/-